

FILED

Mar 04, 2014

**9TH JUDICIAL CIRCUIT
COUNTY OF KALAMAZOO
KALAMAZOO, MICHIGAN**

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN
v Case No.: 2011-1983FC
SAMUEL STEEL III
Defendant.
_____/

HEARING ON MOTIONS
BEFORE THE HONORABLE PAMELA L. LIGHTVOET, CIRCUIT JUDGE
Kalamazoo, Michigan - Tuesday, August 13, 2013

APPEARANCES:

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WITNESSES:

None

EXHIBITS:

None

Identified

Admitted

1 Kalamazoo, Michigan

2 Tuesday, August 13, 2013 at 2:07 p.m.

3 COURT CLERK: The court calls the matter of the
4 People of the State of Michigan versus Samuel Steel, case
5 number C11-1983FC. Parties, please state appearances for
6 the record.

7 MR. CUSICK: Good afternoon, your Honor, Paul
8 Cusick on behalf of the People, Assistant Attorney General.

9 MS. PRENTICE-SAO: Susan Prentice-Sao on behalf of
10 Samuel Steel.

11 THE COURT: All right. And Mr. Steel is here.
12 Counsel, we did have a discussion in chambers. My
13 understanding is that Counsel met beforehand and there were
14 discussions and agreements -- certain agreements with
15 regards to records. So, I certainly appreciate your
16 cooperation in that. It looks like almost everything was
17 resolved before the Court's involvement.

18 We do, however, have a few things that we need to
19 place on the record. First of all, in addressing the
20 motion to preclude certain evidence in response -- the
21 response that was filed by the People -- and specifically
22 we were addressing paragraphs O and P. I guess that would
23 be number four O -- subsection O and subsection P.

24 I'll let you place your arguments on the record
25 if need be; but my understanding is that the Defense is

1 requesting that the -- the People not bring up any
2 reference to dog fighting that the Defendant may have
3 allegedly been involved in. I indicated to Counsel -- I
4 guess the response -- People's response indicate that the
5 People intend to introduce -- I'm sorry -- paragraph 4P, I
6 should say.

7 The People intend to admit evidence that
8 Defendant used his phone to call a veterinarian in Chicago
9 to get dogs sperm frozen and have it shipped to his house.
10 Through investigation, the FBI contacted the veterinarian
11 and she gave the FBI the Defendant's phone number. This
12 lead to the Defendant being located and arrested in
13 Georgia. The evidence is relevant under MRE 401, MRE 402
14 and MRE 403.

15 I did point out during the discussions that even
16 the response doesn't necessarily refer to dog fighting. I
17 don't know that we need to bring up dog fighting under the
18 403 balancing test and I think that it might be more
19 prejudicial than probative in inferring that there is some
20 dog fighting going on. I don't know, again, the facts, the
21 specific facts are. It might be an issue at trial; it
22 might be necessary to bring up. But at this point, I have
23 indicated to Counsel not to bring up any dog fighting in
24 accordance with your own response here, that wasn't
25 addressed or brought up, there was simply reference to the

1 veterinarian in Chicago being contacted to get dog sperm
2 frozen and I think that is sufficient.

3 So, right now, my ruling is without prejudice at
4 this point; but I don't see a reason why it needs to come
5 in and you can certainly address that outside of the jury
6 if there is a question or a follow up question or something
7 that needs to be asked in that regard. But right now, I
8 agree that that should not be brought up.

9 Counsel, anything other than what the Court just
10 indicated that you want to bring up on the record, other
11 than what was just indicated? It is your motion, Ms.
12 Prentice-Sao, so I will look to you first.

13 MS. PRENTICE-SAO: I am fine with the Court's
14 capture of 4P.

15 THE COURT: Okay. Anything else?

16 MR. CUSICK: Just very briefly, your Honor. I
17 understand the Court's ruling. I will just indicate that,
18 once again, the allegation is Defendant froze sperm in
19 Chicago because he was involved in dog fighting. I
20 understand the Court's ruling. The only thing that I do
21 want to make clear is back in May, just so that this
22 doesn't come up again and I am -- I understand the Court's
23 ruling here -- back in May, the issue of whether or not the
24 Defendant was a -- involved in drug dealing. That issued
25 was resolved in May, per my motion, 404B. I just want to

1 reiterate those activities can come in during trial.

2 THE COURT: I think that I have already ruled on
3 those.

4 MR. CUSICK: Okay.

5 THE COURT: This is just specific. You said his
6 --

7 MR. CUSICK: I understand, I have no issue --

8 THE COURT: Yeah.

9 MR. CUSICK: I just want to make sure that --

10 THE COURT: I think that I prio -- previously
11 ruled on -- that's fine, I don't think that we need to
12 address that again.

13 But again, before you bring up -- just caution
14 your witnesses and before this issue arises. If it needs
15 to come in, we'll address it later; but I don't see a
16 reason right now.

17 MR. CUSICK: Okay, thank you Judge.

18 THE COURT: Okay.

19 With regards to the People's response in
20 paragraph 40, these are with regards to cell phone records.
21 My understanding is that there is going to be someone from
22 Sprint that will testify and track phone numbers or phone
23 calls to certain towers, providing the latitude and
24 longitude of -- from whatever is on the phone records or
25 documentation and that is how they will associate it with a

1 particular tower.

2 Counsel, we had discussions in chambers. I think
3 that we have all dealt with these experts before. I think
4 that I indicated that -- I think that it is general
5 knowledge that there are towers that cell phones ping off
6 of and certainly I am expecting cross-examination with
7 regards to if a tower is full then it might ping off of a
8 different tower and I would expect that would be the
9 testimony of the witness, I don't know. But I don't think
10 that we need any specific expertise -- well, let me just --
11 the individual, my understanding is, -- the name of this
12 particular individual has been on the witness list for a
13 period of time. That the expected testimony -- I indicated
14 to Ms. Prentice-Sao, because she had some concern about
15 where different numbers might ping off of and what the
16 responses of the particular witness might be. I would
17 authorize them -- the Defense to hire an expert to -- a
18 cell phone tower expert, so that they can talk to that
19 person and properly cross-examine the People's witness if
20 necessary and/or bring this particular person in to
21 testify.

22 I indicated that you can simply submit an ex
23 parte request and I will authorize you up to \$800.00 for
24 that expert right now. If you run into an issue that you
25 might need a little more, then you can certainly address

1 that with the Court; but I will expect that will be okay
2 for the present time.

3 My understanding is that you have a name of
4 someone that you are planning on using and you can provide
5 that name to the People and I indicated that that name
6 needs to be turned over by 5:00 p.m.

7 Counsel, is there anything else that you need to
8 place on the record with regards to that issue? And again,
9 I realize this is just a summary and I am --

10 MS. PRENTICE-SAO: Five o'clock p.m. on Friday?

11 THE COURT: On Friday.

12 MS. PRENTICE-SAO: Okay, thank you.

13 THE COURT: There is no specific argument here,
14 we are kind of working off your briefs and our discussions
15 in chambers.

16 MS. PRENTICE-SAO: Yeah.

17 THE COURT: Anything else Ms. Prentice-Sao?

18 MS. PRENTICE-SAO: Nothing else from me, your
19 Honor.

20 THE COURT: Anything else --

21 MR. CUSICK: Nothing else, your Honor.

22 THE COURT: All right, that covers that issue.

23 There is an issue with regards to two witnesses
24 who -- there was a request for immunity.

25 I'll just turn it over to you and you can outline

1 those and the record.

2 MR. CUSICK: Thank you, your Honor.

3 THE COURT: I signed the orders, but you can
4 outline that on the record.

5 MR. CUSICK: Your Honor, Mark Sprague and Paige
6 Bowers are on our witness list. They -- their anticipated
7 testimony is that they will admit that they stole a gun and
8 sold it to Walter Johnson. This is the gun that was used
9 to kill the victim. It is the People's contention that
10 Walter Johnson gave that gun to the Defendant and the
11 Defendant used that gun to kill Milo Conklin, the victim of
12 this case.

13 We would just ask the Court regarding Paige
14 Bowers and Mark Sprague, (inaudible, speaking too softly)
15 orders that I presented to the Court and under MCL 767A71
16 to grant these individuals immunity for the action of
17 stealing the gun and selling it to Walter Johnson.

18 THE COURT: Thank you.

19 Any position on that, Ms. Prentice-Sao?

20 MS. PRENTICE-SAO: I would object to their
21 receiving immunity.

22 THE COURT: All right.

23 Your objection is noted. I did indicate to
24 Counsel that I think it is appropriate under the
25 circumstances and I did sign those orders and they have

1 been received and they are in the file with regards to
2 those two witnesses.

3 There is an issue with regards to the forensic
4 pathologist who is going to testify. Again, I'll turn it
5 over to you Mr. Cusick.

6 MR. CUSICK: Your Honor, I can provide Defense
7 Counsel with the curriculum vitae of Doctor John Bechinski,
8 who did the autopsy in this case and will do so, -- as soon
9 as I receive it.

10 THE COURT: I think that was the only issue is
11 that you hadn't received the CV yet, is that correct?

12 MS. PRENTICE-SAO: They weren't listed -- no one
13 was designated as an expert on the witness list. If there
14 are any other experts, they need to be designated and
15 curriculum vitae provided.

16 THE COURT: All right.

17 MR. CUSICK: Your Honor, I would just indicate
18 that I will provide them with the curriculum vitae and he
19 is an expert in the field of forensic pathology. And in
20 regarding Doctor Luedecking, not Doctor Luedecking -- I'm
21 sorry --

22 THE COURT: Gerald Luedecking.

23 MR. CUSICK: Detective Luedecking, I don't believe
24 that he needs to be listed as an expert, your Honor. I can
25 forward a curriculum vitae with regards to him. He was the

1 one who gathered all the evidence, designated the evidence
2 and sent it to the lab. Was basically the evidence tech in
3 this case. I don't -- once again, have never qualified an
4 evidence tech as an expert witness, but I do intend to call
5 --

6 THE COURT: What did he do, just gather the -- he
7 didn't do any fingerprint testing or anything like that?

8 MR. CUSICK: No, your Honor.

9 THE COURT: Okay.

10 MR. CUSICK: There is one other person, Ann Hunt,
11 she is from the Michigan State Police. Once again, has
12 been on the witness list. She did a test for DNA in this
13 case. The DNA came back that there was no results for DNA.
14 I believe -- and there was a fingerprint analysis taken, no
15 fingerprints were recovered. I may have them testify as to
16 the fact that they did a test and no recovery on it; but
17 once again, I don't believe they need to be qualified as
18 experts in the field. Defense Counsel can question them on
19 the issue that no DNA was found, no fingerprints were
20 found. I just wanted to notify the Court of that.

21 MS. PRENTICE-SAO: My understanding is that they
22 are not designated as experts and they don't have
23 curriculum vitae, per the court rule, then they cannot
24 testify as to any opinions.

25 THE COURT: Sounds to me like there might be some

1 that might need to be qualified under 702. So, any
2 potential experts, why don't you just make sure that you
3 identify those individuals. Sometimes Luedecking comes in
4 and he does testify -- he has specific expertise in certain
5 areas, I know that; he's been qualified in the court
6 before, I think, for certain things. If he is just
7 collecting evidence, that is one thing. If he is doing any
8 type of controlled substance or fingerprint analysis or
9 whatnot, there might be criteria that needs to be outlined
10 on the record for that as far as how they collect that and
11 so forth.

12 It sounds like Hunt and I believe that she has
13 testified here before also -- she is going to provide DNA
14 testimony, she may need to be too. So, I'll just give you
15 until Friday at 5:00 o'clock, like I have given the
16 Defense, to identify any potential witnesses who may be
17 providing expert testimony.

18 MR. CUSICK: Okay, thank you, your Honor.

19 THE COURT: Obviously, that would include your
20 forensic pathologist too.

21 I -- this issue came up before, I think a week or
22 two ago. Also my understanding is that Defendants have a
23 private investigator doing some work here. So, if there
24 are any supplemental witnesses that you plan to call --
25 have you filed a witness list yet or no?

1 MS. PRENTICE-SAO: Yes I have and I have --

2 THE COURT: So any supplemental witnesses they
3 need to be filed by Friday at 5:00 o'clock. I indicated
4 that and any reports need to be turned over to the People
5 by that date and time also. Do you understand that Ms.
6 Prentice-Sao?

7 MS. PRENTICE-SAO: Yes I do and I already have
8 responses from Clatterbuck on that that, so that will be
9 done.

10 I will also indicate for the record -- I know
11 that there has been a lot of cooperation on this case and I
12 certainly appreciate it. Sounds like we do have some
13 individuals that might be coming from different state
14 office outside of Kalamazoo County. Like Ms. Hunt, I
15 believe is -- Doctor Hunt, I believe is from Grand Rapids
16 or Lansing?

17 MR. CUSICK: Well Doctor Bechinski and Ann Hunt
18 are coming from Grand Rapids --

19 THE COURT: Okay.

20 MR. CUSICK: But the material witness subpoenaed
21 will be for Steven Brown, who lives in Illinois and
22 potentially Kristine Wilkerson who lives in Georgia.

23 THE COURT: Okay. I guess what I'll do is this,
24 just throw out the fact that we certainly have a wonderful
25 video technology monitor -- system here. We've got a

1 monitor that -- we haven't had any issues yet, really, but
2 it does show everyone in real time. So, I don't know if,
3 Counsel, you can speak with Mr. Steel and see if he has any
4 objections to any of those individuals appearing by way of
5 teleconference instead of live at trial; that certainly
6 saves the State money. But I will let you discuss that
7 option and let us know. We can always place that on the
8 record later too.

9 MS. PRENTICE-SAO: Mr. Champion had previously
10 spoken with Samuel Steel on that issue and we have no
11 problem with people appearing by video. We have experience
12 in doing that with the Besham Sugrim trial; we had some lay
13 witnesses and expert witnesses appear by video and it
14 worked out fine and I think that it saved the State a lot
15 of money.

16 THE COURT: Does that include the witnesses --
17 the out of state witnesses Steve Brower and Kristine
18 Wilkerson --

19 MR. CUSICK: Correct.

20 THE COURT: And maybe --

21 MS. PRENTICE-SAO: Brown in person. I think that
22 would be more effective for him to be --

23 THE COURT: I don't know who they are, so --

24 MS. PRENTICE-SAO: -- critical.

25 THE COURT: Okay.

1 MR. CUSICK: That's fine, your Honor and we were
2 in court back in May; Kristine Wilkerson was a stipulation,
3 I believe, for Kristine Wilkerson to appear --

4 THE COURT: To appear by way of teleconference.

5 MR. CUSICK: I do want to subpoena her --

6 THE COURT: Sure.

7 MR. CUSICK: -- but obviously we will do
8 everything we can to provide that she can do it by
9 teleconference.

10 THE COURT: Okay.

11 So, it sounds like you wouldn't have an issue
12 then with the, I don't know the Doctor's name, the
13 pathologist and -- and Ann Hunt, is that correct? Is that
14 what you are indicating?

15 MS. PRENTICE-SAO: Yes, that would be fine.

16 THE COURT: I'll throw that out there and let you
17 go from there.

18 I believe -- the only -- the last thing that I
19 have in my notes that we addressed in chambers is Mr. Steel
20 was eventually located in Georgia, from what I understand,
21 and it looks like Ms. Prentice-Sao was offering to
22 stipulate that that is where he was located at a particular
23 time or whatnot. We had some discussion. I understand the
24 People are planning on presenting some testimony that
25 indicates that he used a different name down there and -- I

1 don't know the extent of what you are planning on
2 introducing -- but I did indicate that I am not going to
3 prevent -- there was a request by Ms. Prentice-Sao that
4 they be prevented from going into that since there is a
5 stipulation. I certainly understand how it might go into
6 the People's argument if they are going to argue that he
7 was trying to avoid being found -- changed his name.
8 Arguably there is a jury instruction that indicates that
9 people can run or hide for various different reasons, but
10 that is something that this jury can certainly use in their
11 -- when they are considering the evidence too, so I can
12 understand the argument that they do want some of that
13 information in front of the jury.

14 So, I indicated to Counsel that I am not going to
15 restrict them from introducing that testimony. My
16 understanding is that there is two, three, possibly four
17 witnesses that are -- they can shorten up somewhat and we
18 don't have to have a lot of information on this, but I -- I
19 can understand for argument purposes that they might want
20 to do that. So, I am not going to restrict that. But
21 again, my understanding is that we are not going to have a
22 lot of this information out there if they -- it doesn't
23 sound like they are going to object to what some of these
24 people are going to say, as far as Mr. Steel being located
25 down there and using a different name or whatnot. So, I

1 just don't want to drag things out and Counsel, I think
2 that you understand that and we can certainly deal with any
3 objections as necessary depending on how it comes in and
4 how long it is taking and so forth. But they are certainly
5 entitled to bring in witnesses with regards to those
6 issues.

7 Anything else, then Counsel? I think that covers
8 everything on my list. Anything else that we need to
9 address before the trial?

10 MR. CUSICK: I don't believe so, your Honor.

11 THE COURT: No.

12 MS. PRENTICE-SAO: The only thing I can think of
13 is that I did talk to Mr.Cusick earlier and told him that -
14 -

15 THE COURT: I can barely hear you.

16 MS. PRENTICE-SAO: I'm sorry. I did speak with
17 the Prosecutor earlier and told him that we may file some
18 impeachment notices; we are still working on getting the
19 criminal background information for their witnesses and we
20 -- and we are just working on that as fast as we can.

21 THE COURT: Okay.

22 MS. PRENTICE-SAO: So, we can add that to the
23 Friday by 5:00 deadline if you would like.

24 THE COURT: All right, we'll do that.

25 Anything else you want to add to the Friday

1 deadline?

2 MR. CUSICK: No, your Honor.

3 THE COURT: Ms. Prentice-Sao, anything further?

4 MS. PRENTICE-SAO: No, we are just going to be
5 busy.

6 THE COURT: All right.

7 Okay, have a good rest of the week and I'll see
8 everyone in a couple of weeks.

9 MR. CUSICK: Thank you, your Honor.

10 THE COURT: Again, I appreciate your cooperation
11 in working through some of these issues, Counsel.

12 I guess that I should also indicate. Since we
13 did have a motion filed, Ms. Prentice-Sao, why don't you
14 prepare an order indicating the two things that I addressed
15 per your motion, so that is clear in the file. And that
16 would be the issue of keeping any reference to dog fighting
17 out and I will allow their witness to testify and
18 potentially provide expert witness information or testimony
19 with regards to the cell phones and cell phone towers.

20 Okay.

21 Thank you.

22 MR. CUSICK: Thank you, your Honor.

23 THE COURT: By Friday at 5:00.

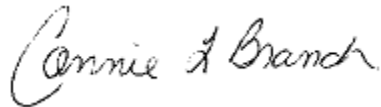
24 (At 2:29 p.m., court is in recess)
25

1 STATE OF MICHIGAN)

2)
3 COUNTY OF KALAMAZOO)

4 I certify that this transcript consisting of 19 pages is a
5 complete, true, and correct transcript of the hearing held in
6 this case on August 13, 2013.

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10 February 22, 2014



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